STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Wal-24-236

ALICIA ROWE
Appellant

v.

STATE MUTUAL INSURANCE COMPANY
Appellee

On Appeal from the Superior Court, Waldo County
Docket No. CV-2022-8

BRIEF OF APPELLANT ALICIA ROWE

Jeffrey T. Edwards, Bar No. 0679
Preti, Flaherty, Beliveau & Pachios, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
Tel: 207-791-3000
jedwards@preti.com

Attorney for Appellant, Alicia Rowe

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Page

Statutes

FACTUAL AND PROCEDURAL BACKGROUND

This is an appeal from a reach-and-apply action brought pursuant to 24-A M.R.S. § 2904 that arose out of an accident at 23 Winnecook Road in Burnham, Maine on October 30, 2019. William Chase and Gwendolyn Chase were the owners of the mobile home, having acquired it on September 1, 2019. (A.225; A.17 n.6.) At the time of the accident, they were in the process of remodeling the home and were looking for tenants to reside there. (A.227.) On October 30, 2019, Appellant Alicia Rowe had scheduled an appointment with the Chases to take a look at the mobile home and see if she would like to rent it from them. (*Id.*) As she was about to enter the home, Rowe stepped into a hidden 12-inch gap between the stairs and the entrance to the mobile home caused by the Chases remodeling, and she suffered severe injuries. (A.227-28.)

Mr. Chase admits that he should have warned Rowe in advance about the incomplete remodeling work, but he negligently failed to do so. (A.228.)

The Insurance Policy

On the date of the accident, October 30, 2019, the Chases were named insureds on a homeowner's insurance policy issued by Appellee State Mutual Insurance Company ("State Mutual"). (A.230.) The policy was in full force and effect at the time of the loss, with a policy period of November 30, 2018, to November 30, 2019. (A.230-31.)

The State Mutual policy provides liability coverages for the Chases. As relevant here, it contains the following grant of coverage:

> If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:
>
> 1. Pay up to our limit for liability for damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
> 2. Provide a defense our expense by counsel of our choice, even if the suit is groundless, false, or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defends ends when our limit of liability for the "Occurrence" has been exhausted by payment of Judgment or other settlement.

(A.55).

Under the terms of the policy, "bodily injury" is defined as "bodily harm, sickness, or disease, including required care, loss of services and death that results" (A.40), and an "occurrence" means, inter alia, an accident during the policy period resulting in bodily injury (A.41).

In sum, the State Mutual policy provides liability coverage to an insured for the insured's liability for bodily injury caused by an occurrence during the policy period.

This grant of coverage is subject to a number of exclusions. Under the "Insured Location" exclusion, coverage does not apply to the following:

> **"Insured's" Premises Not An "Insured Location"**
> "Bodily injury" or "property damage" arising out of a premises:

a. Owned by an "insured";
b. Rented to an "Insured"; or
c. Rented to others by "an insured";
that is not an "insured location;"

(A.57.) An "insured location" is defined as follows:

a. The "residence premises;"
b. The part of other premises, other structures and grounds used by you as a residence; and
1. Which is shown in the Declarations; or
2. Which is acquired by you during the policy period for your use as a residence;
c. Any premises used by you in connection with premises described in **a.** and **b.** above;
d. Any part of a premises:
1. Not owned by an "insured"; and
2. Where an "insured" is temporarily residing;
e. Vacant land, other than farm land, owned by or rented to an "insured";
f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";
g. Individual or family cemetery plots or burial vaults of an "insured"; or
h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

(A.41.) "Residence premises" means:

a. The one family dwelling where you reside;
b. The two, three or four family dwelling where you reside in at least one of the family units; or
c. That part of any other building where you reside;
and which is shown as the "residence premises" in the Declarations. "Residence premises" also includes other structures and grounds at that location. (*Id.*)

Subsequent Litigation

As a result of the Chases' negligence and failure to warn her about the dangerous gap, Rowe filed a complaint against them in the Waldo County Superior Court. (A.228-29.)

When Rowe first made her claim for damages as a result of the accident, the Chases tendered the claim to State Mutual, who received timely notice of the accident. (A.231-32.) In response, State Mutual issued a declination letter, taking the position that there was no coverage for the bodily injury claim arising out of the accident because the property located at 23 Winnecook Road was not an "insured location" under the policy, thus triggering an exclusion. (A.232.)

State Mutual subsequently agreed to undertake the defense of the Chases with respect to Rowe's bodily injury claim, subject to a Reservation of Rights letter. (A. 232.) In the letter, it continued to take the position that coverage for the bodily injury claim was excluded from coverage because the mobile home was not an "insured location." (A. 232-33.)

Rowe and the Chases ultimately entered into a settlement agreement whereby judgment was entered against the Chases in the amount of $500,000.00. (A.233.) Based upon that judgment, dated January 24, 2022,

Rowe commenced a reach-and-apply action against State Mutual pursuant to 24-A M.R.S. § 2904. (A.1.)

On May 10, 2023, both Rowe and State Mutual filed partial motions for summary judgment. (A.3.) On May 6, 2024, the trial court granted State Mutual's motion. (A.7-A.22.) It concluded that the mobile home at 23 Winnecook Road was not an "insured location," and that Rowe's injuries were ones "arising out of" the premises within the meaning of an exclusion in the policy. (A.22.) Rowe appealed. (A.5.)

ISSUES PRESENTED

1. Does the policy's "Insured Location" exclusion apply where the insureds used the mobile home at 23 Winnecook Road as a residence for their tenants?

2. Does the policy's "Insured Location" exclusion apply where Rowe alleged that the injuries she suffered arose out of the insured's negligent failure to warn rather than from conditions at the mobile home?

ARGUMENT

This Court "review[s] the entry of a summary judgment de novo, considering the evidence in the light most favorable to the nonprevailing party to determine whether the parties' statements of material facts and the record evidence to which the statements refer demonstrate that there is no

genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Connary v. Shea*, 2021 ME 44, ¶ 11, 259 A.3d 118 (quotation marks omitted). At issue in this appeal is the applicability of the State Mutual insurance policy's "Insured Location" exclusion, which excludes coverage for "bodily injury" or "property damage" arising out of a premises owned by an "insured"; rented to an "Insured"; or rented to others by "an insured"; that is not an "insured location." (A.57.) Such "[e]xclusions and exceptions in insurance policies are disfavored, and are construed strictly against the insurer." *Patrons Oxford Ins. Co. v. Harris*, 2006 ME 72, ¶ 7, 905 A.2d 819 (quotation marks omitted). Because the "Insured Location" exclusion is inapplicable, State Mutual is not entitled to judgment as a matter of law, and the trial court erred in ruling otherwise.

1. The mobile home is an "insured location."

The policy provides, inter alia, that an "insured location" is the part of other premises, other structures and grounds used by the insured as a residence; and which is acquired by the insureds during the policy period for the insureds' use as a residence. (A.41.) That definition is met here.

First, the summary judgment record shows—and the trial court correctly found—that the Chases acquired the mobile home during the policy period. *See* A.17 n.6. ("The court is persuaded that although the Chases had

owned the mobile home at issue at an earlier time prior to the policy period of the Policy, their re-acquisition of the mobile home on September 1, 2019 would . . . constitute the Chases having acquired those premises 'during the policy period.'"); A.200 (State Mutual admitting that Hillary Drake sold the mobile home to the Chases on September 1, 2019).

Second, viewing the facts in the light most favorable to Rowe and construing the exclusion strictly against State Mutual—as this Court must—the Chases acquired the mobile home to use it as a residence. Though they may not have planned to live there themselves, the Chases undisputably intended to rent the mobile home out to tenants to use for residential purposes. *See, e.g.*, A.201 (admitting that the Chases were seeking tenants to occupy the property); A.227 (same). They wanted someone to live there and pay rent. (A.227.) Indeed, this was the reason that Rowe came to the property in the first place. (*Id.*)

The mobile home qualifies as an "insured location" under the State Mutual policy because it was acquired by the Chases during the policy period for use as "a" residence. There is no requirement that the insureds actually be the ones to live at the property. The only requirement is that the property be used as "a" residence by the insureds. If the policy intended to impose an additional requirement that the insureds personally occupy the place as their

own residence, the policy definition of "insured location" could have (and should have) stated: for your use as ***your*** residence, rather than what it actually says: for your use as ***a*** residence. The interpretation urged by State Mutual and found by the trial court requires reading new language into the policy by substituting "your" for "a." This is impermissible.

Reading in this additional requirement here is also inconsistent with other provisions of the insurance policy. For example, another way that a premises meets the definition of "insured location" is to be the "residence premises," which is defined by the policy as the "dwelling where you reside." (A.41.) Thus, where the policy restricts coverage to property that the insured occupies as the insured's home, the policy uses the phrase "where you reside" and not the phrase "used by you as a residence."

Clearly, the policy language is subject to differing interpretations.[1] While the language "use as a residence" *could* be read to mean that the insured must actually personally occupy the property, the plain language does not impose that requirement. It merely requires that the property be used as "a" residence. Where policy provisions are reasonably susceptible to two or more

[1] The two cases cited by the trial court, *Gardner v. State Farm Fire and Cas. Co.*, 544 F.3d 553, 560 (3d Cir. 2008) and *Harrington v. Citizens Property Ins. Corp.*, 54 So. 3d 999, 1003 (Fla. App. 4 Dist. 2010), do not assist the Court because both concerned whether the accident scene was a "residence premises," as defined in the policies, and did not involve the policy language at issue in this case.

different interpretations, they are deemed ambiguous. *See Geyerhahn v. U.S. Fid. & Guar. Co.*, 1999 ME 40, ¶ 12, 724 A.2d 1258 ("Insurance contract language is ambiguous if it is reasonably susceptible of different interpretations.") (quotation marks omitted).

Ambiguous policy language must be interpreted against the insurer and in favor of coverage. *Id.* ("[I]t is a well-settled principle that if the language of an insurance policy is ambiguous or susceptible of varying interpretations, then the policy is construed against the insurer in favor of coverage.") (quotation marks omitted). Interpreting the policy here against State Mutual and in favor of coverage requires a determination that the mobile home acquired by the Chases during the policy period for their use as a residence by their tenants qualifies as an "insured location."

Because the record shows that the Chases acquired the mobile home located at 23 Winnecook Road during the policy period to use it as a residence for their tenants, it is considered an "insured location" under the definition of that term in the State Mutual policy, and the policy's "Insured Location" exclusion does not apply.

2. The "bodily injury" did not "aris[e] out of [the] premises."

The "Insured Location" exclusion is inapplicable for an additional reason: Rowe's claim for bodily injury did not arise out of the premises. Rather, the claim asserted by Rowe against the Chases arises out of their negligent conduct in failing to warn her about the hidden gap between the front steps and entrance to the mobile home caused by their remodeling work. Likewise, the basis for the Judgment of January 24, 2022, against the Chases is their negligent failure to warn. *See Langevin v. Allstate Ins. Co.*, 2013 ME 55, ¶ 10, 66 A.3d 585 (looking to underlying complaint and judgment entered by the court based on parties' agreement to determine basis of liability and damages).

Cases within the First Circuit and elsewhere interpreting the "Insured Location" exclusion establish that it only applies to the insureds' liability based upon theories of premises liability arising out of a hazardous condition of the premises; it is not applicable to liability for negligent conduct in general. *See, e.g.*, *Vermont Mut. Ins. Co. v. Zamsky*, 732 F.3d 37, 45 (1st Cir. 2013) (bodily injury caused by pouring gasoline on a portable fire pit did not arise out the premises); *Green Mountain Ins. Co., Inc. v. Wakelin*, 484 Mass. 222, 231, 140 N.E.3d 418, 425 (2020) (claim for wrongful death from carbon monoxide poisoning by an electrical heater did not arise out of an uninsured premises);

Callahan v. Quincy Mut. Fire Ins. Co., 50 Mass. App. Ct. 260, 263, 736 N.E.2d 857, 859 (2000) ("Callahan's liability stems from his harboring a vicious animal—i.e., personal tortious conduct—not any condition of the Marshfield premises.").[2]

Thus, the exclusion from liability for "bodily injury" "arising out of" a premises that is not an "insured location" only applies to the insureds' liability for a condition of the premises based upon premises liability or injuries that are casually connected to the physical condition of the property. It does not apply to the tortious personal conduct of the insureds. Consequently, this exclusion does not apply to bodily injury arising out of the Chases' negligent conduct in failing to warn Rowe about the gap between the front steps and entrance to the mobile home that had been created by the Chases' remodeling.

The exclusion's "arising out of" language must be narrowly construed. *See AIG Prop. Cas. Co. v. Cosby*, 892 F.3d 25, 29 (1st Cir. 2018); *Union Mut. Fire Ins. Co. v. Com. Union Ins. Co.*, 521 A.2d 308, 311 (Me. 1987). Viewed through

[2] *See also, e.g.*, *Westfield Ins. Co. v. Hunter*, 2011-Ohio-1818, ¶ 25, 128 Ohio St. 3d 540, 545, 948 N.E.2d 931, 937 (exclusion for bodily injury on an uninsured premises does not exclude coverage for bodily injury arising from negligence that is unrelated to the quality or condition of the premises); *Kitchens v. Brown*, 545 So. 2d 1310, 1312 (La. Ct. App. 1989) (bodily injury caused by the negligence of an insured in instructing an employee to use gasoline to ignite a pile of trash did not arise out of the premises); *Lititz Mut. Ins. Co. v. Branch*, 561 S.W.2d 371, 373 (Mo. App. 1977) (bodily injury resulting from a dog bite did not arise out of an uninsured premises).

this lens, the policy exclusion for "bodily injury" arising out of a condition of a premises which is not an "insured location" cannot be applied to Rowe's bodily injury claim, which arises out of the Chases' negligent failure to provide her with adequate warnings about the gap they created.

CONCLUSION

For these reasons, Appellant Alicia Rowe respectfully requests that this Court determine that the "Insured Location" exclusion in the Chases' insurance policy is inapplicable and hold that Appellee State Mutual Insurance Company is not entitled to judgment as a matter of law.

Dated at Portland, Maine this 23rd day of August, 2024.

/s/ Jeffrey T. Edwards

Jeffrey T. Edwards, Esq. Bar No. 0679
Attorney for Appellant
Preti Flaherty Beliveau & Pachios, LLP
P.O. Box 9546
Portland, ME 04112-9546
207.791.3000
jedwards@preti.com

CERTIFICATE OF SERVICE

I, Jeffrey T. Edwards, Attorney for Alicia Rowe, certify that I have, this date, served by email (by agreement of counsel) Appellant's Brief to the attorney listed below:

Matthew T. Mehalic, Esq. (Bar No. 4162)
Norman, Hanson & DeTroy
Two Canal Plaza
P.O. Box 4600
Portland, Maine 04112
207.774.7000
mmehalic@nhdlaw.com

Dated: August 23, 2024

/s/ Jeffrey T. Edwards

Jeffrey T. Edwards, Esq. Bar No. 0679

PRETI, FLAHERTY, BELIVEAU,
& PACHIOS, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
Tel: 207-791-3000
Fax: 207-791-3111